

Union Calendar No. 271

106TH CONGRESS
1ST SESSION

H. R. 1167

[Report No. 106-477]

A BILL

To amend the Indian Self-Determination and Education Assistance Act to provide for further self-governance by Indian tribes, and for other purposes.

NOVEMBER 17, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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To amend the Indian Self-Determination and Education Assistance Act to provide for further self-governance by Indian tribes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1999

Mr. GEORGE MILLER of California (for himself, Mr. YOUNG of Alaska, Mr. KILDEE, Mr. DEFazio, Mr. Faleomavaega, Mr. Abercrombie, Mr. ROMERO-BARCELO, Mr. UNDERWOOD, Mr. KENNEDY of Rhode Island, Mr. INSLEE, Mr. HAYWORTH, Mr. McDERMOTT, Ms. PELOSI, Mr. BROWN of California, Mr. OBERSTAR, Mr. FILNER, Mr. PASTOR, Mr. FRANK of Massachusetts, Mr. MARTINEZ, Ms. STABENOW, Mr. TOWNS, Mrs. MINK of Hawaii, Mr. PICKERING, Mr. ALLEN, Mr. STUPAK, and Mr. FROST) introduced the following bill; which was referred to the Committee on Resources

NOVEMBER 17, 1999

Additional sponsors: Mr. WAXMAN, Mrs. CAPPS, Mrs. CHRISTENSEN, and Mr. BLUMENAUER

NOVEMBER 17, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 17, 1999]

A BILL

To amend the Indian Self-Determination and Education As-

sistance Act to provide for further self-governance by Indian tribes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Tribal Self-Governance*
5 *Amendments of 1999”.*

6 **SEC. 2. FINDINGS.**

7 *Congress finds that—*

8 *(1) the tribal right of self-government flows from*
9 *the inherent sovereignty of Indian tribes and nations;*

10 *(2) the United States recognizes a special govern-*
11 *ment-to-government relationship with Indian tribes,*
12 *including the right of the Indian tribes to self-govern-*
13 *ance, as reflected in the Constitution, treaties, Federal*
14 *statutes, and the course of dealings of the United*
15 *States with Indian tribes;*

16 *(3) although progress has been made, the Federal*
17 *bureaucracy, with its centralized rules and regula-*
18 *tions, has eroded tribal self-governance and dominates*
19 *tribal affairs;*

20 *(4) the Tribal Self-Governance Demonstration*
21 *Project, established under title III of the Indian Self-*
22 *Determination and Education Assistance Act (25*
23 *U.S.C. 450f note) was designed to improve and per-*
24 *petuate the government-to-government relationship be-*

1 *tween Indian tribes and the United States and to*
2 *strengthen tribal control over Federal funding and*
3 *program management;*

4 *(5) although the Federal Government has made*
5 *considerable strides in improving Indian health care,*
6 *it has failed to fully meet its trust responsibilities and*
7 *to satisfy its obligations to the Indian tribes under*
8 *treaties and other laws; and*

9 *(6) Congress has reviewed the results of the Trib-*
10 *al Self-Governance Demonstration Project and finds*
11 *that transferring full control and funding to tribal*
12 *governments, upon tribal request, over decision mak-*
13 *ing for Federal programs, services, functions, and ac-*
14 *tivities (or portions thereof)—*

15 *(A) is an appropriate and effective means of*
16 *implementing the Federal policy of government-*
17 *to-government relations with Indian tribes; and*

18 *(B) strengthens the Federal policy of Indian*
19 *self-determination.*

20 **SEC. 3. DECLARATION OF POLICY.**

21 *It is the policy of Congress to—*

22 *(1) permanently establish and implement tribal*
23 *self-governance within the Department of Health and*
24 *Human Services;*

1 (2) call for full cooperation from the Department
2 of Health and Human Services and its constituent
3 agencies in the implementation of tribal self-
4 governance—

5 (A) to enable the United States to maintain
6 and improve its unique and continuing relation-
7 ship with, and responsibility to, Indian tribes;

8 (B) to permit each Indian tribe to choose
9 the extent of its participation in self-governance
10 in accordance with the provisions of the Indian
11 Self-Determination and Education Assistance
12 Act relating to the provision of Federal services
13 to Indian tribes;

14 (C) to ensure the continuation of the trust
15 responsibility of the United States to Indian
16 tribes and Indian individuals;

17 (D) to affirm and enable the United States
18 to fulfill its obligations to the Indian tribes
19 under treaties and other laws;

20 (E) to strengthen the government-to-govern-
21 ment relationship between the United States and
22 Indian tribes through direct and meaningful
23 consultation with all tribes;

24 (F) to permit an orderly transition from
25 Federal domination of programs and services to

1 *provide Indian tribes with meaningful authority,*
2 *control, funding, and discretion to plan, conduct,*
3 *redesign, and administer programs, services,*
4 *functions, and activities (or portions thereof)*
5 *that meet the needs of the individual tribal com-*
6 *munities;*

7 *(G) to provide for a measurable parallel re-*
8 *duction in the Federal bureaucracy as programs,*
9 *services, functions, and activities (or portions*
10 *thereof) are assumed by Indian tribes;*

11 *(H) to encourage the Secretary to identify*
12 *all programs, services, functions, and activities*
13 *(or portions thereof) of the Department of Health*
14 *and Human Services that may be managed by*
15 *an Indian tribe under this Act and to assist In-*
16 *Indian tribes in assuming responsibility for such*
17 *programs, services, functions, and activities (or*
18 *portions thereof); and*

19 *(I) to provide Indian tribes with the earliest*
20 *opportunity to administer programs, services,*
21 *functions, and activities (or portions thereof)*
22 *from throughout the Department of Health and*
23 *Human Services.*

1 **SEC. 4. TRIBAL SELF-GOVERNANCE.**

2 *The Indian Self-Determination and Education Assist-*
3 *ance Act (25 U.S.C. 450 et seq.) is amended by adding at*
4 *the end the following new titles:*

5 **“TITLE V—TRIBAL SELF-**
6 **GOVERNANCE**

7 **“SEC. 501. ESTABLISHMENT.**

8 *“The Secretary of Health and Human Services shall*
9 *establish and carry out a program within the Indian*
10 *Health Service of the Department of Health and Human*
11 *Services to be known as the ‘Tribal Self-Governance Pro-*
12 *gram’ in accordance with this title.*

13 **“SEC. 502. DEFINITIONS.**

14 *“(a) IN GENERAL.—For purposes of this title—*

15 *“(1) the term ‘construction project’ means an or-*
16 *ganized noncontinuous undertaking to complete a spe-*
17 *cific set of predetermined objectives for the planning,*
18 *environmental determination, design, construction,*
19 *repair, improvement, or expansion of buildings or fa-*
20 *cilities, as described in a construction project agree-*
21 *ment. The term ‘construction project’ does not mean*
22 *construction program administration and activities*
23 *described in paragraphs (1) through (3) of section*
24 *4(m), which may otherwise be included in a funding*
25 *agreement under this title;*

1 “(2) the term ‘construction project agreement’
2 means a negotiated agreement between the Secretary
3 and an Indian tribe which at a minimum—

4 “(A) establishes project phase start and
5 completion dates;

6 “(B) defines a specific scope of work and
7 standards by which it will be accomplished;

8 “(C) identifies the responsibilities of the In-
9 dian tribe and the Secretary;

10 “(D) addresses environmental consider-
11 ations;

12 “(E) identifies the owner and operations/
13 maintenance entity of the proposed work;

14 “(F) provides a budget;

15 “(G) provides a payment process; and

16 “(H) establishes the duration of the agree-
17 ment based on the time necessary to complete the
18 specified scope of work, which may be 1 or more
19 years;

20 “(3) the term ‘inherent Federal functions’ means
21 those Federal functions which cannot legally be dele-
22 gated to Indian tribes;

23 “(4) the term ‘inter-tribal consortium’ means a
24 coalition of two or more separate Indian tribes that
25 join together for the purpose of participating in self-

1 *governance, including, but not limited to, a tribal or-*
2 *ganization;*

3 “(5) the term ‘gross mismanagement’ means a
4 *significant, clear, and convincing violation of com-*
5 *compact, funding agreement, or regulatory, or statutory*
6 *requirements applicable to Federal funds transferred*
7 *to a tribe by a compact or funding agreement that re-*
8 *sults in a significant reduction of funds available for*
9 *the programs, services, functions, or activities (or por-*
10 *tions thereof) assumed by an Indian tribe;*

11 “(6) the term ‘tribal shares’ means an Indian
12 *tribe’s portion of all funds and resources that support*
13 *secretarial programs, services, functions, and activi-*
14 *ties (or portions thereof) that are not required by the*
15 *Secretary for performance of inherent Federal func-*
16 *tions;*

17 “(7) the term ‘Secretary’ means the Secretary of
18 *Health and Human Services; and*

19 “(8) the term ‘self-governance’ means the pro-
20 *gram established pursuant to section 501.*

21 “(b) *INDIAN TRIBE.*—Where an Indian tribe has au-
22 *thorized another Indian tribe, an inter-tribal consortium,*
23 *or a tribal organization to plan for or carry out programs,*
24 *services, functions, or activities (or portions thereof) on its*
25 *behalf under this title, the authorized Indian tribe, inter-*

1 *tribal consortium, or tribal organization shall have the*
2 *rights and responsibilities of the authorizing Indian tribe*
3 *(except as otherwise provided in the authorizing resolution*
4 *or in this title). In such event, the term ‘Indian tribe’ as*
5 *used in this title shall include such other authorized Indian*
6 *tribe, inter-tribal consortium, or tribal organization.*

7 **“SEC. 503. SELECTION OF PARTICIPATING INDIAN TRIBES.**

8 “(a) *CONTINUING PARTICIPATION.—Each Indian tribe*
9 *that is participating in the Tribal Self-Governance Dem-*
10 *onstrations Project under title III on the date of enactment*
11 *of this title may elect to participate in self-governance*
12 *under this title under existing authority as reflected in trib-*
13 *al resolutions.*

14 “(b) *ADDITIONAL PARTICIPANTS.—*

15 “(1) *In addition to those Indian tribes partici-*
16 *ating in self-governance under subsection (a), each*
17 *year an additional 50 Indian tribes that meet the eli-*
18 *gibility criteria specified in subsection (c) shall be en-*
19 *titled to participate in self-governance.*

20 “(2)(A) *An Indian tribe that has withdrawn*
21 *from participation in an inter-tribal consortium or*
22 *tribal organization, in whole or in part, shall be enti-*
23 *tled to participate in self-governance provided the In-*
24 *Indian tribe meets the eligibility criteria specified in*
25 *subsection (c).*

1 “(B) *If an Indian tribe has withdrawn from*
2 *participation in an inter-tribal consortium or tribal*
3 *organization, it shall be entitled to its tribal share*
4 *of funds supporting those programs, services, func-*
5 *tions, and activities (or portions thereof) that it will*
6 *be carrying out under its compact and funding agree-*
7 *ment.*

8 “(C) *In no event shall the withdrawal of an In-*
9 *Indian tribe from an inter-tribal consortium or tribal*
10 *organization affect the eligibility of the inter-tribal*
11 *consortium or tribal organization to participate in*
12 *self-governance.*

13 “(c) *APPLICANT POOL.—The qualified applicant pool*
14 *for self-governance shall consist of each Indian tribe that—*

15 “(1) *successfully completes the planning phase*
16 *described in subsection (d);*

17 “(2) *has requested participation in self-govern-*
18 *ance by resolution or other official action by the gov-*
19 *erning body (or bodies) of the Indian tribe or tribes*
20 *to be served; and*

21 “(3) *has demonstrated, for the previous 3 fiscal*
22 *years, financial stability and financial management*
23 *capability.*

24 *Evidence that during such years the Indian tribe had no*
25 *uncorrected significant and material audit exceptions in*

1 *the required annual audit of the Indian tribe's self-deter-*
2 *mination contracts or self-governance funding agreements*
3 *shall be conclusive evidence of the required stability and ca-*
4 *pability for the purposes of this subsection.*

5 “(d) *PLANNING PHASE.—Each Indian tribe seeking*
6 *participation in self-governance shall complete a planning*
7 *phase. The planning phase shall be conducted to the satis-*
8 *faction of the Indian tribe and shall include—*

9 “(1) *legal and budgetary research; and*

10 “(2) *internal tribal government planning and*
11 *organizational preparation relating to the adminis-*
12 *tration of health care programs.*

13 “(e) *GRANTS.—Subject to the availability of appro-*
14 *priations, any Indian tribe meeting the requirements of*
15 *paragraphs (2) and (3) of subsection (c) shall be eligible*
16 *for grants—*

17 “(1) *to plan for participation in self-governance;*
18 *and*

19 “(2) *to negotiate the terms of participation by*
20 *the Indian tribe or tribal organization in self-govern-*
21 *ance, as set forth in a compact and a funding agree-*
22 *ment.*

23 “(f) *RECEIPT OF GRANT NOT REQUIRED.—Receipt of*
24 *a grant under subsection (e) shall not be a requirement of*
25 *participation in self-governance.*

1 **“SEC. 504. COMPACTS.**

2 “(a) *COMPACT REQUIRED.*—*The Secretary shall nego-*
3 *tiate and enter into a written compact with each Indian*
4 *tribe participating in self-governance in a manner con-*
5 *sistent with the Federal Government’s trust responsibility,*
6 *treaty obligations, and the government-to-government rela-*
7 *tionship between Indian tribes and the United States.*

8 “(b) *CONTENTS.*—*Each compact required under sub-*
9 *section (a) shall set forth the general terms of the govern-*
10 *ment-to-government relationship between the Indian tribe*
11 *and the Secretary, including such terms as the parties in-*
12 *tend shall control year after year. Such compacts may only*
13 *be amended by mutual agreement of the parties.*

14 “(c) *EXISTING COMPACTS.*—*An Indian tribe partici-*
15 *pating in the Tribal Self-Governance Demonstration*
16 *Project under title III on the date of enactment of this title*
17 *shall have the option at any time thereafter to—*

18 “(1) *retain its Tribal Self-Governance Dem-*
19 *onstration Project compact (in whole or in part) to*
20 *the extent the provisions of such compact are not di-*
21 *rectly contrary to any express provision of this title,*
22 *or*

23 “(2) *negotiate in lieu thereof (in whole or in*
24 *part) a new compact in conformity with this title.*

25 “(d) *TERM AND EFFECTIVE DATE.*—*The effective date*
26 *of a compact shall be the date of the approval and execution*

1 *by the Indian tribe or another date agreed upon by the par-*
2 *ties, and shall remain in effect for so long as permitted by*
3 *Federal law or until terminated by mutual written agree-*
4 *ment, retrocession, or reassumption.*

5 **“SEC. 505. FUNDING AGREEMENTS.**

6 “(a) *FUNDING AGREEMENT REQUIRED.—The Sec-*
7 *retary shall negotiate and enter into a written funding*
8 *agreement with each Indian tribe participating in self-gov-*
9 *ernance in a manner consistent with the Federal Govern-*
10 *ment’s trust responsibility, treaty obligations, and the gov-*
11 *ernment-to-government relationship between Indian tribes*
12 *and the United States.*

13 “(b) *CONTENTS.—Each funding agreement required*
14 *under subsection (a) shall, as determined by the Indian*
15 *tribe, authorize the Indian tribe to plan, conduct, consoli-*
16 *date, administer, and receive full tribal share funding, in-*
17 *cluding tribal shares of Indian Health Service competitive*
18 *grants (excluding congressionally earmarked competitive*
19 *grants), for all programs, services, functions, and activities*
20 *(or portions thereof), that are carried out for the benefit*
21 *of Indians because of their status as Indians without regard*
22 *to the agency or office of the Indian Health Service within*
23 *which the program, service, function, or activity (or portion*
24 *thereof) is performed. Such programs, services, functions,*
25 *or activities (or portions thereof) include all programs, serv-*

1 *ices, functions, activities (or portions thereof) where Indian*
2 *tribes or Indians are primary or significant beneficiaries,*
3 *administered by the Department of Health and Human*
4 *Services through the Indian Health Service and grants*
5 *(which may be added to a funding agreement after award*
6 *of such grants) and all local, field, service unit, area, re-*
7 *gional, and central headquarters or national office func-*
8 *tions administered under the authority of—*

9 “(1) the Act of November 2, 1921 (25 U.S.C. 13);

10 “(2) the Act of April 16, 1934 (25 U.S.C. 452 et
11 *seq.);*

12 “(3) the Act of August 5, 1954 (68 Stat. 674);

13 “(4) the Indian Health Care Improvement Act
14 *(25 U.S.C. 1601 et seq.);*

15 “(5) the Indian Alcohol and Substance Abuse
16 *Prevention and Treatment Act of 1986 (25 U.S.C.*
17 *2401 et seq.);*

18 “(6) any other Act of Congress authorizing agen-
19 *cies of the Department of Health and Human Serv-*
20 *ices to administer, carry out, or provide financial as-*
21 *sistance to such programs, functions, or activities (or*
22 *portions thereof) described in this section; or*

23 “(7) any other Act of Congress authorizing such
24 *programs, functions, or activities (or portions thereof)*
25 *under which appropriations are made to agencies*

1 *other than agencies within the Department of Health*
2 *and Human Services when the Secretary administers*
3 *such programs, functions, or activities (or portions*
4 *thereof).*

5 *“(c) INCLUSION IN COMPACT OR FUNDING AGREE-*
6 *MENT.—Indian tribes or Indians need not be identified in*
7 *the authorizing statute for a program or element of a pro-*
8 *gram to be eligible for inclusion in a compact or funding*
9 *agreement under this title.*

10 *“(d) FUNDING AGREEMENT TERMS.—Each funding*
11 *agreement shall set forth terms that generally identify the*
12 *programs, services, functions, and activities (or portions*
13 *thereof) to be performed or administered, the general budget*
14 *category assigned, the funds to be provided, including those*
15 *to be provided on a recurring basis, the time and method*
16 *of transfer of the funds, the responsibilities of the Secretary,*
17 *and any other provisions to which the Indian tribe and the*
18 *Secretary agree.*

19 *“(e) SUBSEQUENT FUNDING AGREEMENTS.—Absent*
20 *notification from an Indian tribe that is withdrawing or*
21 *retroceding the operation of one or more programs, services,*
22 *functions, or activities (or portions thereof) identified in a*
23 *funding agreement, or unless otherwise agreed to by the par-*
24 *ties, each funding agreement shall remain in full force and*
25 *effect until a subsequent funding agreement is executed, and*

1 *the terms of the subsequent funding agreement shall be ret-*
2 *roactive to the end of the term of the preceding funding*
3 *agreement.*

4 “(f) *EXISTING FUNDING AGREEMENTS.*—*Each Indian*
5 *tribe participating in the Tribal Self-Governance Dem-*
6 *onstration Project established under title III on the date*
7 *of enactment of this title shall have the option at any time*
8 *thereafter to—*

9 “(1) *retain its Tribal Self-Governance Dem-*
10 *onstration Project funding agreement (in whole or in*
11 *part) to the extent the provisions of such funding*
12 *agreement are not directly contrary to any express*
13 *provision of this title; or*

14 “(2) *adopt in lieu thereof (in whole or in part)*
15 *a new funding agreement in conformity with this*
16 *title.*

17 “(g) *STABLE BASE FUNDING.*—*At the option of an In-*
18 *dian tribe, a funding agreement may provide for a stable*
19 *base budget specifying the recurring funds (including, for*
20 *purposes of this provision, funds available under section*
21 *106(a) of the Act) to be transferred to such Indian tribe,*
22 *for such period as may be specified in the funding agree-*
23 *ment, subject to annual adjustment only to reflect changes*
24 *in congressional appropriations by sub-sub activity exclud-*
25 *ing earmarks.*

1 **“SEC. 506. GENERAL PROVISIONS.**

2 “(a) *APPLICABILITY.*—*The provisions of this section*
3 *shall apply to compacts and funding agreements negotiated*
4 *under this title and an Indian tribe may, at its option,*
5 *include provisions that reflect such requirements in a com-*
6 *pact or funding agreement.*

7 “(b) *CONFLICTS OF INTEREST.*—*Indian tribes partici-*
8 *pating in self-governance under this title shall ensure that*
9 *internal measures are in place to address conflicts of inter-*
10 *est in the administration of self-governance programs, serv-*
11 *ices, functions, or activities (or portions thereof).*

12 “(c) *AUDITS.*—

13 “(1) *SINGLE AGENCY AUDIT ACT.*—*The provi-*
14 *sions of chapter 75 of title 31, United States Code, re-*
15 *quiring a single agency audit report shall apply to*
16 *funding agreements under this title.*

17 “(2) *COST PRINCIPLES.*—*An Indian tribe shall*
18 *apply cost principles under the applicable Office of*
19 *Management and Budget Circular, except as modified*
20 *by section 106 or other provisions of law, or by any*
21 *exemptions to applicable Office of Management and*
22 *Budget Circulars subsequently granted by Office of*
23 *Management and Budget. No other audit or account-*
24 *ing standards shall be required by the Secretary. Any*
25 *claim by the Federal Government against the Indian*
26 *tribe relating to funds received under a funding*

1 *agreement based on any audit under this subsection*
2 *shall be subject to the provisions of section 106(f).*

3 “(d) *RECORDS.*—

4 “(1) *IN GENERAL.*—*Unless an Indian tribe*
5 *specifies otherwise in the compact or funding agree-*
6 *ment, records of the Indian tribe shall not be consid-*
7 *ered Federal records for purposes of chapter 5 of title*
8 *5, United States Code.*

9 “(2) *RECORDKEEPING SYSTEM.*—*The Indian*
10 *tribe shall maintain a recordkeeping system, and,*
11 *after 30 days advance notice, provide the Secretary*
12 *with reasonable access to such records to enable the*
13 *Department of Health and Human Services to meet*
14 *its minimum legal recordkeeping system requirements*
15 *under sections 3101 through 3106 of title 44, United*
16 *States Code.*

17 “(e) *REDESIGN AND CONSOLIDATION.*—*An Indian*
18 *tribe may redesign or consolidate programs, services, func-*
19 *tions, and activities (or portions thereof) included in a*
20 *funding agreement under section 505 and reallocate or redi-*
21 *rect funds for such programs, services, functions, and activi-*
22 *ties (or portions thereof) in any manner which the Indian*
23 *tribe deems to be in the best interest of the health and wel-*
24 *fare of the Indian community being served, only if the rede-*
25 *sign or consolidation does not have the effect of denying eli-*

1 *gibility for services to population groups otherwise eligible*
2 *to be served under Federal law.*

3 “(f) *RETROCESSION.*—*An Indian tribe may retrocede,*
4 *fully or partially, to the Secretary programs, services, func-*
5 *tions, or activities (or portions thereof) included in the com-*
6 *compact or funding agreement. Unless the Indian tribe rescinds*
7 *the request for retrocession, such retrocession will become*
8 *effective within the time frame specified by the parties in*
9 *the compact or funding agreement. In the absence of such*
10 *a specification, such retrocession shall become effective on—*

11 “(1) *the earlier of—*

12 “(A) *one year from the date of submission*
13 *of such request; or*

14 “(B) *the date on which the funding agree-*
15 *ment expires; or*

16 “(2) *such date as may be mutually agreed by the*
17 *Secretary and the Indian tribe.*

18 “(g) *WITHDRAWAL.*—

19 “(1) *PROCESS.*—*An Indian tribe may fully or*
20 *partially withdraw from a participating inter-tribal*
21 *consortium or tribal organization its share of any*
22 *program, function, service, or activity (or portions*
23 *thereof) included in a compact or funding agreement.*
24 *Such withdrawal shall become effective within the*
25 *time frame specified in the resolution which author-*

1 *izes transfer to the participating tribal organization*
2 *or inter-tribal consortium. In the absence of a specific*
3 *time frame set forth in the resolution, such with-*
4 *drawal shall become effective on—*

5 *“(A) the earlier of—*

6 *“(i) one year from the date of submis-*
7 *sion of such request; or*

8 *“(ii) the date on which the funding*
9 *agreement expires; or*

10 *“(B) such date as may be mutually agreed*
11 *upon by the Secretary, the withdrawing Indian*
12 *tribe, and the participating tribal organization*
13 *or inter-tribal consortium that has signed the*
14 *compact or funding agreement on behalf of the*
15 *withdrawing Indian tribe, inter-tribal consor-*
16 *tium, or tribal organization.*

17 *“(2) DISTRIBUTION OF FUNDS.—When an In-*
18 *dian tribe or tribal organization eligible to enter into*
19 *a self-determination contract under title I or a com-*
20 *compact or funding agreement under this title fully or*
21 *partially withdraws from a participating inter-tribal*
22 *consortium or tribal organization, the withdrawing*
23 *Indian tribe or tribal organization shall be entitled to*
24 *its tribal share of funds supporting those programs,*
25 *services, functions, or activities (or portions thereof)*

1 *which it will be carrying out under its own self-deter-*
2 *mination contract or compact and funding agreement*
3 *(calculated on the same basis as the funds were ini-*
4 *tially allocated in the funding agreement of the inter-*
5 *tribal consortium or tribal organization), and such*
6 *funds shall be transferred from the funding agreement*
7 *of the inter-tribal consortium or tribal organization,*
8 *provided that the provisions of sections 102 and*
9 *105(i), as appropriate, shall apply to such with-*
10 *drawing Indian tribe.*

11 “(3) *REGAINING MATURE CONTRACT STATUS.*—*If*
12 *an Indian tribe elects to operate all or some pro-*
13 *grams, services, functions, or activities (or portions*
14 *thereof) carried out under a compact or funding*
15 *agreement under this title through a self-determina-*
16 *tion contract under title I, at the option of the Indian*
17 *tribe, the resulting self-determination contract shall be*
18 *a mature self-determination contract.*

19 “(h) *NONDUPLICATION.*—*For the period for which, and*
20 *to the extent to which, funding is provided under this title*
21 *or under the compact or funding agreement, the Indian*
22 *tribe shall not be entitled to contract with the Secretary*
23 *for such funds under section 102, except that such Indian*
24 *tribe shall be eligible for new programs on the same basis*
25 *as other Indian tribes.*

1 **“SEC. 507. PROVISIONS RELATING TO THE SECRETARY.**

2 “(a) *MANDATORY PROVISIONS.*—

3 “(1) *HEALTH STATUS REPORTS.*—*Compacts or*
4 *funding agreements negotiated between the Secretary*
5 *and an Indian tribe shall include a provision that re-*
6 *quires the Indian tribe to report on health status and*
7 *service delivery—*

8 “(A) *to the extent such data is not otherwise*
9 *available to the Secretary and specific funds for*
10 *this purpose are provided by the Secretary under*
11 *the funding agreement; and*

12 “(B) *if such reporting shall impose mini-*
13 *mal burdens on the participating Indian tribe*
14 *and such requirements are promulgated under*
15 *section 517.*

16 “(2) *REASSUMPTION—(A) Compacts and fund-*
17 *ing agreements negotiated between the Secretary and*
18 *an Indian tribe shall include a provision authorizing*
19 *the Secretary to reassume operation of a program,*
20 *service, function, or activity (or portions thereof) and*
21 *associated funding if there is a specific finding rel-*
22 *ative to that program, service, function, or activity*
23 *(or portion thereof) of—*

24 “(i) *imminent endangerment of the public*
25 *health caused by an act or omission of the In-*
26 *dian tribe, and the imminent endangerment*

1 *arises out of a failure to carry out the compact*
2 *or funding agreement; or*

3 *“(i) gross mismanagement with respect to*
4 *funds transferred to a tribe by a compact or*
5 *funding agreement, as determined by the Sec-*
6 *retary in consultation with the Inspector Gen-*
7 *eral, as appropriate.*

8 *“(B) The Secretary shall not reassume operation*
9 *of a program, service, function, or activity (or por-*
10 *tions thereof) unless (i) the Secretary has first pro-*
11 *vided written notice and a hearing on the record to*
12 *the Indian tribe; and (ii) the Indian tribe has not*
13 *taken corrective action to remedy the imminent*
14 *endangerment to public health or gross mismanage-*
15 *ment.*

16 *“(C) Notwithstanding subparagraph (B), the*
17 *Secretary may, upon written notification to the tribe,*
18 *immediately reassume operation of a program, serv-*
19 *ice, function, or activity (or portion thereof) and asso-*
20 *ciated funding if (i) the Secretary makes a finding of*
21 *imminent substantial and irreparable endangerment*
22 *of the public health caused by an act or omission of*
23 *the Indian tribe; and (ii) the endangerment arises out*
24 *of a failure to carry out the compact or funding*
25 *agreement. If the Secretary reassumes operation of a*

1 *program, service, function, or activity (or portion*
2 *thereof) under this subparagraph, the Secretary shall*
3 *provide the tribe with a hearing on the record not*
4 *later than 10 days after such reassumption.*

5 *“(D) In any hearing or appeal involving a deci-*
6 *sion to reassume operation of a program, service,*
7 *function, or activity (or portion thereof), the Sec-*
8 *retary shall have the burden of proof of demonstrating*
9 *by clear and convincing evidence the validity of the*
10 *grounds for the reassumption.*

11 *“(b) FINAL OFFER.—In the event the Secretary and*
12 *a participating Indian tribe are unable to agree, in whole*
13 *or in part, on the terms of a compact or funding agreement*
14 *(including funding levels), the Indian tribe may submit a*
15 *final offer to the Secretary. Not more than 45 days after*
16 *such submission, or within a longer time agreed upon by*
17 *the Indian tribe, the Secretary shall review and make a de-*
18 *termination with respect to such offer. In the absence of a*
19 *timely rejection of the offer, in whole or in part, made in*
20 *compliance with subsection (c), the offer shall be deemed*
21 *agreed to by the Secretary.*

22 *“(c) REJECTION OF FINAL OFFERS.—If the Secretary*
23 *rejects an offer made under subsection (b) (or one or more*
24 *provisions or funding levels in such offer), the Secretary*
25 *shall provide—*

1 “(1) a timely written notification to the Indian
2 tribe that contains a specific finding that clearly
3 demonstrates, or that is supported by a controlling
4 legal authority, that—

5 “(A) the amount of funds proposed in the
6 final offer exceeds the applicable funding level to
7 which the Indian tribe is entitled under this
8 title;

9 “(B) the program, function, service, or ac-
10 tivity (or portion thereof) that is the subject of
11 the final offer is an inherent Federal function
12 that cannot legally be delegated to an Indian
13 tribe;

14 “(C) the Indian tribe cannot carry out the
15 program, function, service, or activity (or por-
16 tion thereof) in a manner that would not result
17 in significant danger or risk to the public health;
18 or

19 “(D) the tribe is not eligible to participate
20 in self-governance under section 503;

21 “(2) technical assistance to overcome the objec-
22 tions stated in the notification required by paragraph
23 (1);

24 “(3) the Indian tribe with a hearing on the
25 record with the right to engage in full discovery rel-

1 *evant to any issue raised in the matter and the op-*
2 *portunity for appeal on the objections raised, pro-*
3 *vided that the Indian tribe may, in lieu of filing such*
4 *appeal, directly proceed to initiate an action in a*
5 *Federal district court pursuant to section 110(a); and*

6 *“(4) the Indian tribe with the option of entering*
7 *into the severable portions of a final proposed com-*
8 *compact or funding agreement, or provision thereof, (in-*
9 *cluding lesser funding amount, if any), that the Sec-*
10 *retary did not reject, subject to any additional alter-*
11 *ations necessary to conform the compact or funding*
12 *agreement to the severed provisions. If an Indian*
13 *tribe exercises the option specified herein, it shall re-*
14 *tain the right to appeal the Secretary’s rejection*
15 *under this section, and paragraphs (1), (2), and (3)*
16 *shall only apply to that portion of the proposed final*
17 *compact, funding agreement or provision thereof that*
18 *was rejected by the Secretary.*

19 *“(d) BURDEN OF PROOF.—With respect to any hear-*
20 *ing or appeal or civil action conducted pursuant to this*
21 *section, the Secretary shall have the burden of dem-*
22 *onstrating by clear and convincing evidence the validity of*
23 *the grounds for rejecting the offer (or a provision thereof)*
24 *made under subsection (b).*

1 “(e) *GOOD FAITH.*—*In the negotiation of compacts*
2 *and funding agreements the Secretary shall at all times ne-*
3 *gotiate in good faith to maximize implementation of the*
4 *self-governance policy. The Secretary shall carry out this*
5 *title in a manner that maximizes the policy of tribal self-*
6 *governance, consistent with section 3.*

7 “(f) *SAVINGS.*—*To the extent that programs, functions,*
8 *services, or activities (or portions thereof) carried out by*
9 *Indian tribes under this title reduce the administrative or*
10 *other responsibilities of the Secretary with respect to the*
11 *operation of Indian programs and result in savings that*
12 *have not otherwise been included in the amount of tribal*
13 *shares and other funds determined under section 508(c), the*
14 *Secretary shall make such savings available to the Indian*
15 *tribes, inter-tribal consortia, or tribal organizations for the*
16 *provision of additional services to program beneficiaries in*
17 *a manner equitable to directly served, contracted, and com-*
18 *pacted programs.*

19 “(g) *TRUST RESPONSIBILITY.*—*The Secretary is pro-*
20 *hibited from waiving, modifying, or diminishing in any*
21 *way the trust responsibility of the United States with re-*
22 *spect to Indian tribes and individual Indians that exists*
23 *under treaties, Executive orders, other laws, or court deci-*
24 *sions.*

1 “(h) *DECISIONMAKER.*—A decision that constitutes
2 *final agency action and relates to an appeal within the De-*
3 *partment of Health and Human Services conducted under*
4 *subsection (c) shall be made either—*

5 “(1) *by an official of the Department who holds*
6 *a position at a higher organizational level within the*
7 *Department than the level of the departmental agency*
8 *in which the decision that is the subject of the appeal*
9 *was made; or*

10 “(2) *by an administrative judge.*

11 **“SEC. 508. TRANSFER OF FUNDS.**

12 “(a) *IN GENERAL.*—Pursuant to the terms of any com-
13 *pact or funding agreement entered into under this title, the*
14 *Secretary shall transfer to the Indian tribe all funds pro-*
15 *vided for in the funding agreement, pursuant to subsection*
16 *(c), and provide funding for periods covered by joint resolu-*
17 *tion adopted by Congress making continuing appropria-*
18 *tions, to the extent permitted by such resolutions. In any*
19 *instance where a funding agreement requires an annual*
20 *transfer of funding to be made at the beginning of a fiscal*
21 *year, or requires semiannual or other periodic transfers of*
22 *funding to be made commencing at the beginning of a fiscal*
23 *year, the first such transfer shall be made not later than*
24 *10 days after the apportionment of such funds by the Office*

1 *of Management and Budget to the Department, unless the*
2 *funding agreement provides otherwise.*

3 “(b) *MULTIYEAR FUNDING.*—*The Secretary is hereby*
4 *authorized to employ, upon tribal request, multiyear fund-*
5 *ing agreements, and references in this title to funding agree-*
6 *ments shall include such multiyear agreements.*

7 “(c) *AMOUNT OF FUNDING.*—*The Secretary shall pro-*
8 *vide funds under a funding agreement under this title in*
9 *an amount equal to the amount that the Indian tribe would*
10 *have been entitled to receive under self-determination con-*
11 *tracts under this Act, including amounts for direct program*
12 *costs specified under section 106(a)(1) and amounts for con-*
13 *tract support costs specified under sections 106(a)(2),*
14 *(a)(3), (a)(5), and (a)(6), including any funds that are spe-*
15 *cifically or functionally related to the provision by the Sec-*
16 *retary of services and benefits to the Indian tribe or its*
17 *members, all without regard to the organizational level*
18 *within the Department where such functions are carried*
19 *out.*

20 “(d) *PROHIBITIONS.*—*The Secretary is expressly pro-*
21 *hibited from—*

22 “(1) *failing or refusing to transfer to an Indian*
23 *tribe its full share of any central, headquarters, re-*
24 *gional, area, or service unit office or other funds due*
25 *under this Act, except as required by Federal law;*

1 “(2) withholding portions of such funds for
2 transfer over a period of years; and

3 “(3) reducing the amount of funds required
4 herein—

5 “(A) to make funding available for self-gov-
6 ernance monitoring or administration by the
7 Secretary;

8 “(B) in subsequent years, except pursuant
9 to—

10 “(i) a reduction in appropriations
11 from the previous fiscal year for the pro-
12 gram or function to be included in a com-
13 pact or funding agreement;

14 “(ii) a congressional directive in legis-
15 lation or accompanying report;

16 “(iii) a tribal authorization;

17 “(iv) a change in the amount of pass-
18 through funds subject to the terms of the
19 funding agreement; or

20 “(v) completion of a project, activity,
21 or program for which such funds were pro-
22 vided;

23 “(C) to pay for Federal functions, including
24 Federal pay costs, Federal employee retirement
25 benefits, automated data processing, technical as-

1 *sistance, and monitoring of activities under this*
2 *Act; or*

3 “(D) *to pay for costs of Federal personnel*
4 *displaced by self-determination contracts under*
5 *this Act or self-governance;*

6 *except that such funds may be increased by the Secretary*
7 *if necessary to carry out this Act or as provided in section*
8 *105(c)(2).*

9 “(e) *OTHER RESOURCES.—In the event an Indian*
10 *tribe elects to carry out a compact or funding agreement*
11 *with the use of Federal personnel, Federal supplies (includ-*
12 *ing supplies available from Federal warehouse facilities),*
13 *Federal supply sources (including lodging, airline transpor-*
14 *tation, and other means of transportation including the use*
15 *of interagency motor pool vehicles) or other Federal re-*
16 *sources (including supplies, services, and resources avail-*
17 *able to the Secretary under any procurement contracts in*
18 *which the Department is eligible to participate), the Sec-*
19 *retary is authorized to transfer such personnel, supplies, or*
20 *resources to the Indian tribe.*

21 “(f) *REIMBURSEMENT TO INDIAN HEALTH SERVICE.—*
22 *With respect to functions transferred by the Indian Health*
23 *Service to an Indian tribe, the Indian Health Service is*
24 *authorized to provide goods and services to the Indian tribe,*
25 *on a reimbursable basis, including payment in advance*

1 *with subsequent adjustment, and the reimbursements re-*
2 *ceived therefrom, along with the funds received from the In-*
3 *dian tribe pursuant to this title, may be credited to the*
4 *same or subsequent appropriation account which provided*
5 *the funding, such amounts to remain available until ex-*
6 *pended.*

7 “(g) *PROMPT PAYMENT ACT.*—Chapter 39 of title 31,
8 *United States Code, shall apply to the transfer of funds due*
9 *under a compact or funding agreement authorized under*
10 *this title.*

11 “(h) *INTEREST OR OTHER INCOME ON TRANSFERS.*—
12 *An Indian tribe is entitled to retain interest earned on any*
13 *funds paid under a compact or funding agreement to carry*
14 *out governmental or health purposes and such interest shall*
15 *not diminish the amount of funds the Indian tribe is au-*
16 *thorized to receive under its funding agreement in the year*
17 *the interest is earned or in any subsequent fiscal year.*
18 *Funds transferred under this Act shall be managed using*
19 *the prudent investment standard.*

20 “(i) *CARRYOVER OF FUNDS.*—All funds paid to an In-
21 *dian tribe in accordance with a compact or funding agree-*
22 *ment shall remain available until expended. In the event*
23 *that an Indian tribe elects to carry over funding from one*
24 *year to the next, such carryover shall not diminish the*
25 *amount of funds the Indian tribe is authorized to receive*

1 *under its funding agreement in that or any subsequent fis-*
2 *cal year.*

3 “(j) *PROGRAM INCOME.*—*All medicare, medicaid, or*
4 *other program income earned by an Indian tribe shall be*
5 *treated as supplemental funding to that negotiated in the*
6 *funding agreement and the Indian tribe may retain all such*
7 *income and expend such funds in the current year or in*
8 *future years except to the extent that the Indian Health*
9 *Care Improvement Act (25 U.S.C. 1601 et seq.) provides*
10 *otherwise for medicare and medicaid receipts, and such*
11 *funds shall not result in any offset or reduction in the*
12 *amount of funds the Indian tribe is authorized to receive*
13 *under its funding agreement in the year the program in-*
14 *come is received or for any subsequent fiscal year.*

15 “(k) *LIMITATION OF COSTS.*—*An Indian tribe shall*
16 *not be obligated to continue performance that requires an*
17 *expenditure of funds in excess of the amount of funds trans-*
18 *ferred under a compact or funding agreement. If at any*
19 *time the Indian tribe has reason to believe that the total*
20 *amount provided for a specific activity in the compact or*
21 *funding agreement is insufficient the Indian tribe shall pro-*
22 *vide reasonable notice of such insufficiency to the Secretary.*
23 *If the Secretary does not increase the amount of funds*
24 *transferred under the funding agreement, the Indian tribe*

1 *may suspend performance of the activity until such time*
2 *as additional funds are transferred.*

3 **“SEC. 509. CONSTRUCTION PROJECTS.**

4 “(a) *IN GENERAL.*—*Indian tribes participating in*
5 *tribal self-governance may carry out construction projects*
6 *under this title if they elect to assume all Federal respon-*
7 *sibilities under the National Environmental Policy Act of*
8 *1969, the Historic Preservation Act, and related provisions*
9 *of law that would apply if the Secretary were to undertake*
10 *a construction project, by adopting a resolution (1) desig-*
11 *nating a certifying officer to represent the Indian tribe and*
12 *to assume the status of a responsible Federal official under*
13 *such laws, and (2) accepting the jurisdiction of the Federal*
14 *court for the purpose of enforcement of the responsibilities*
15 *of the responsible Federal official under such environmental*
16 *laws.*

17 “(b) *NEGOTIATIONS.*—*Construction project proposals*
18 *shall be negotiated pursuant to the statutory process in sec-*
19 *tion 105(m) and resulting construction project agreements*
20 *shall be incorporated into funding agreements as addenda.*

21 “(c) *CODES AND STANDARDS.*—*The Indian tribe and*
22 *the Secretary shall agree upon and specify appropriate*
23 *buildings codes and architectural/engineering standards*
24 *(including health and safety) which shall be in conformity*

1 *with nationally recognized standards for comparable*
2 *projects.*

3 “(d) *RESPONSIBILITY FOR COMPLETION.—The Indian*
4 *tribe shall assume responsibility for the successful comple-*
5 *tion of the construction project in accordance with the nego-*
6 *tiated construction project agreement.*

7 “(e) *FUNDING.—Funding for construction projects car-*
8 *ried out under this title shall be included in funding agree-*
9 *ments as annual advance payments, with semiannual pay-*
10 *ments at the option of the Indian tribe. Annual advance*
11 *and semiannual payment amounts shall be determined*
12 *based on mutually agreeable project schedules reflecting*
13 *work to be accomplished within the advance payment pe-*
14 *riod, work accomplished and funds expended in previous*
15 *payment periods, and the total prior payments. The Sec-*
16 *retary shall include associated project contingency funds*
17 *with each advance payment installment. The Indian tribe*
18 *shall be responsible for the management of the contingency*
19 *funds included in funding agreements.*

20 “(f) *APPROVAL.—The Secretary shall have at least one*
21 *opportunity to approve project planning and design docu-*
22 *ments prepared by the Indian tribe in advance of construc-*
23 *tion of the facilities specified in the scope of work for each*
24 *negotiated construction project agreement or amendment*
25 *thereof which results in a significant change in the original*

1 *scope of work. The Indian tribe shall provide the Secretary*
2 *with project progress and financial reports not less than*
3 *semiannually. The Secretary may conduct on-site project*
4 *oversight visits semiannually or on an alternate schedule*
5 *agreed to by the Secretary and the Indian tribe.*

6 “(g) *WAGES.—All laborers and mechanics employed by*
7 *contractors and subcontractors in the construction, alter-*
8 *ation, or repair, including painting or decorating of build-*
9 *ing or other facilities in connection with construction*
10 *projects undertaken by self-governance Indian tribes under*
11 *this Act, shall be paid wages at not less than those pre-*
12 *vailing wages on similar construction in the locality as de-*
13 *termined by the Secretary of Labor in accordance with the*
14 *Davis-Bacon Act of March 3, 1931 (46 Stat. 1494). With*
15 *respect to construction, alteration, or repair work to which*
16 *the Act of March 3, 1921, is applicable under the terms*
17 *of this section, the Secretary of Labor shall have the author-*
18 *ity and functions set forth in Reorganization Plan Num-*
19 *bered 14, of 1950, and section 2 of the Act of June 13, 1934*
20 *(48 Stat. 948).*

21 “(h) *APPLICATION OF OTHER LAWS.—Unless other-*
22 *wise agreed to by the Indian tribe, no provision of the Office*
23 *of Federal Procurement Policy Act, the Federal Acquisition*
24 *Regulations issued pursuant thereto, or any other law or*
25 *regulation pertaining to Federal procurement (including*

1 *Executive orders) shall apply to any construction project*
2 *conducted under this title.*

3 **“SEC. 510. FEDERAL PROCUREMENT LAWS AND REGULA-**
4 **TIONS.**

5 *“Notwithstanding any other provision of law, unless*
6 *expressly agreed to by the participating Indian tribe, the*
7 *compacts and funding agreements entered into under this*
8 *title shall not be subject to Federal contracting or coopera-*
9 *tive agreement laws and regulations (including Executive*
10 *orders and the regulations relating to procurement issued*
11 *by the Secretary), except to the extent that such laws ex-*
12 *pressly apply to Indian tribes.*

13 **“SEC. 511. CIVIL ACTIONS.**

14 *“(a) CONTRACT DEFINED.—For the purposes of section*
15 *110, the term ‘contract’ shall include compacts and funding*
16 *agreements entered into under this title.*

17 *“(b) APPLICABILITY OF CERTAIN LAWS.—Section 2103*
18 *of the Revised Statutes of the United States Code (25 U.S.C.*
19 *81) and section 16 of the Act of June 18, 1934 (25 U.S.C.*
20 *476), shall not apply to attorney and other professional con-*
21 *tracts entered into by Indian tribes participating in self-*
22 *governance under this title.*

23 *“(c) REFERENCES.—All references in the Indian Self-*
24 *Determination and Education Assistance Act (25 U.S.C.*
25 *450 et seq.) to section 1 of the Act of June 26, 1936 (25*

1 *U.S.C. 81) are hereby deemed to include section 1 of the*
2 *Act of July 3, 1952 (25 U.S.C. 82a).*

3 **“SEC. 512. FACILITATION.**

4 “(a) *SECRETARIAL INTERPRETATION.—Except as oth-*
5 *erwise provided by law, the Secretary shall interpret all*
6 *Federal laws, Executive orders and regulations in a manner*
7 *that will facilitate—*

8 “(1) *the inclusion of programs, services, func-*
9 *tions, and activities (or portions thereof) and funds*
10 *associated therewith, in the agreements entered into*
11 *under this section;*

12 “(2) *the implementation of compacts and fund-*
13 *ing agreements entered into under this title; and*

14 “(3) *the achievement of tribal health goals and*
15 *objectives.*

16 “(b) *REGULATION WAIVER.—*

17 “(1) *An Indian tribe may submit a written re-*
18 *quest to waive application of a regulation promul-*
19 *gated under this Act for a compact or funding agree-*
20 *ment entered into with the Indian Health Service*
21 *under this title, to the Secretary identifying the ap-*
22 *plicable Federal regulation under this Act sought to*
23 *be waived and the basis for the request.*

24 “(2) *Not later than 90 days after receipt by the*
25 *Secretary of a written request by an Indian tribe to*

1 *waive application of a regulation under this Act for*
2 *a compact or funding agreement entered into under*
3 *this title, the Secretary shall either approve or deny*
4 *the requested waiver in writing. A denial may be*
5 *made only upon a specific finding by the Secretary*
6 *that identified language in the regulation may not be*
7 *waived because such waiver is prohibited by Federal*
8 *law. A failure to approve or deny a waiver request*
9 *not later than 90 days after receipt shall be deemed*
10 *an approval of such request. The Secretary's decision*
11 *shall be final for the Department.*

12 “(c) *ACCESS TO FEDERAL PROPERTY.*—*In connection*
13 *with any compact or funding agreement executed pursuant*
14 *to this title or an agreement negotiated under the Tribal*
15 *Self-Governance Demonstration Project established under*
16 *title III, as in effect before the enactment of the Tribal Self-*
17 *Governance Amendments of 1999, upon the request of an*
18 *Indian tribe, the Secretary—*

19 “(1) *shall permit an Indian tribe to use existing*
20 *school buildings, hospitals, and other facilities and all*
21 *equipment therein or appertaining thereto and other*
22 *personal property owned by the Government within*
23 *the Secretary's jurisdiction under such terms and con-*
24 *ditions as may be agreed upon by the Secretary and*
25 *the tribe for their use and maintenance;*

1 “(2) may donate to an Indian tribe title to any
2 personal or real property found to be excess to the
3 needs of any agency of the Department, or the Gen-
4 eral Services Administration, except that—

5 “(A) subject to the provisions of subpara-
6 graph (B), title to property and equipment fur-
7 nished by the Federal Government for use in the
8 performance of the compact or funding agree-
9 ment or purchased with funds under any com-
10 pact or funding agreement shall, unless otherwise
11 requested by the Indian tribe, vest in the appro-
12 priate Indian tribe;

13 “(B) if property described in subparagraph
14 (A) has a value in excess of \$5,000 at the time
15 of retrocession, withdrawal, or reassumption, at
16 the option of the Secretary upon the retrocession,
17 withdrawal, or reassumption, title to such prop-
18 erty and equipment shall revert to the Depart-
19 ment of Health and Human Services; and

20 “(C) all property referred to in subpara-
21 graph (A) shall remain eligible for replacement,
22 maintenance, and improvement on the same
23 basis as if title to such property were vested in
24 the United States; and

1 “(3) shall acquire excess or surplus Government
2 personal or real property for donation to an Indian
3 tribe if the Secretary determines the property is ap-
4 propriate for use by the Indian tribe for any purpose
5 for which a compact or funding agreement is author-
6 ized under this title.

7 “(d) *MATCHING OR COST-PARTICIPATION REQUIRE-*
8 *MENT.*—All funds provided under compacts, funding agree-
9 ments, or grants made pursuant to this Act, shall be treated
10 as non-Federal funds for purposes of meeting matching or
11 cost participation requirements under any other Federal or
12 non-Federal program.

13 “(e) *STATE FACILITATION.*—States are hereby author-
14 ized and encouraged to enact legislation, and to enter into
15 agreements with Indian tribes to facilitate and supplement
16 the initiatives, programs, and policies authorized by this
17 title and other Federal laws benefiting Indians and Indian
18 tribes.

19 “(f) *RULES OF CONSTRUCTION.*—Each provision of
20 this title and each provision of a compact or funding agree-
21 ment shall be liberally construed for the benefit of the In-
22 dian tribe participating in self-governance and any ambi-
23 guity shall be resolved in favor of the Indian tribe.

1 **“SEC. 513. BUDGET REQUEST.**

2 “(a) *IN GENERAL.*—*The President shall identify in the*
3 *annual budget request submitted to the Congress under sec-*
4 *tion 1105 of title 31, United States Code, all funds nec-*
5 *essary to fully fund all funding agreements authorized*
6 *under this title, including funds specifically identified to*
7 *fund tribal base budgets. All funds so appropriated shall*
8 *be apportioned to the Indian Health Service. Such funds*
9 *shall be provided to the Office of Tribal Self-Governance*
10 *which shall be responsible for distribution of all funds pro-*
11 *vided under section 505. Nothing in this provision shall be*
12 *construed to authorize the Indian Health Service to reduce*
13 *the amount of funds that a self-governance tribe is otherwise*
14 *entitled to receive under its funding agreement or other ap-*
15 *plicable law, whether or not such funds are made available*
16 *to the Office of Tribal Self-Governance under this section.*

17 “(b) *PRESENT FUNDING; SHORTFALLS.*—*In such*
18 *budget request, the President shall identify the level of need*
19 *presently funded and any shortfall in funding (including*
20 *direct program and contract support costs) for each Indian*
21 *tribe, either directly by the Secretary, under self-determina-*
22 *tion contracts, or under compacts and funding agreements*
23 *authorized under this title.*

24 **“SEC. 514. REPORTS.**

25 “(a) *ANNUAL REPORT.*—*Not later than January 1 of*
26 *each year after the date of the enactment of this title, the*

1 *Secretary shall submit to the Committee on Resources of*
2 *the House of Representatives and the Committee on Indian*
3 *Affairs of the Senate a written report regarding the admin-*
4 *istration of this title. Such report shall include a detailed*
5 *analysis of the level of need being presently funded or un-*
6 *funded for each Indian tribe, either directly by the Sec-*
7 *retary, under self-determination contracts under title I, or*
8 *under compacts and funding agreements authorized under*
9 *this Act. In compiling reports pursuant to this section, the*
10 *Secretary may not impose any reporting requirements on*
11 *participating Indian tribes or tribal organizations, not oth-*
12 *erwise provided in this Act.*

13 “(b) *CONTENTS.—The report shall be compiled from*
14 *information contained in funding agreements, annual*
15 *audit reports, and Secretarial data regarding the disposi-*
16 *tion of Federal funds and shall—*

17 “(1) *identify the relative costs and benefits of*
18 *self-governance;*

19 “(2) *identify, with particularity, all funds that*
20 *are specifically or functionally related to the provi-*
21 *sion by the Secretary of services and benefits to self-*
22 *governance Indian tribes and their members;*

23 “(3) *identify the funds transferred to each self-*
24 *governance Indian tribe and the corresponding reduc-*
25 *tion in the Federal bureaucracy;*

1 “(4) identify the funding formula for individual
2 tribal shares of all headquarters funds, together with
3 the comments of affected Indian tribes or tribal orga-
4 nizations, developed under subsection (c);

5 “(5) identify amounts expended in the preceding
6 fiscal year to carry out inherent Federal functions,
7 including an identification of those functions by type
8 and location;

9 “(6) contain a description of the method or
10 methods (or any revisions thereof) used to determine
11 the individual tribal share of funds controlled by all
12 components of the Indian Health Service (including
13 funds assessed by any other Federal agency) for inclu-
14 sion in self-governance compacts or funding agree-
15 ments;

16 “(7) prior to being submitted to Congress, be dis-
17 tributed to the Indian tribes for comment, such com-
18 ment period to be for no less than 30 days; and

19 “(8) include the separate views and comments of
20 the Indian tribes or tribal organizations.

21 “(c) *REPORT ON FUND DISTRIBUTION METHOD.*—Not
22 later than 180 days after the date of enactment of this title,
23 the Secretary shall, after consultation with Indian tribes,
24 submit a written report to the Committee on Resources of
25 the House of Representatives and the Committee on Indian

1 *Affairs of the Senate which describes the method or methods*
2 *used to determine the individual tribal share of funds con-*
3 *trolled by all components of the Indian Health Service (in-*
4 *cluding funds assessed by any other Federal agency) for in-*
5 *clusion in self-governance compacts or funding agreements.*

6 **“SEC. 515. DISCLAIMERS.**

7 “(a) *NO FUNDING REDUCTION.*—*Nothing in this title*
8 *shall be construed to limit or reduce in any way the funding*
9 *for any program, project, or activity serving an Indian*
10 *tribe under this or other applicable Federal law. Any In-*
11 *dian tribe that alleges that a compact or funding agreement*
12 *is in violation of this section may apply the provisions of*
13 *section 110.*

14 “(b) *FEDERAL TRUST AND TREATY RESPONSIBIL-*
15 *ITIES.*—*Nothing in this Act shall be construed to diminish*
16 *in any way the trust responsibility of the United States*
17 *to Indian tribes and individual Indians that exists under*
18 *treaties, Executive orders, or other laws and court decisions.*

19 “(c) *TRIBAL EMPLOYMENT.*—*For purposes of section*
20 *2(2) of the Act of July 5, 1935 (49 Stat. 450, chapter 372)*
21 *(commonly known as the National Labor Relations Act),*
22 *an Indian tribe carrying out a self-determination contract,*
23 *compact, annual funding agreement, grant, or cooperative*
24 *agreement under this Act shall not be considered an em-*
25 *ployer.*

1 “(d) *OBLIGATIONS OF THE UNITED STATES.*—*The In-*
2 *dian Health Service under this Act shall neither bill nor*
3 *charge those Indians who may have the economic means*
4 *to pay for services, nor require any Indian tribe to do so.*

5 “**SEC. 516. APPLICATION OF OTHER SECTIONS OF THE ACT.**

6 “(a) *MANDATORY APPLICATION.*—*All provisions of sec-*
7 *tions 5(b), 6, 7, 102(c) and (d), 104, 105(k) and (l), 106(a)*
8 *through (k), and 111 of this Act and section 314 of Public*
9 *Law 101–512 (coverage under the Federal Tort Claims*
10 *Act), to the extent not in conflict with this title, shall apply*
11 *to compacts and funding agreements authorized by this*
12 *title.*

13 “(b) *DISCRETIONARY APPLICATION.*—*At the request of*
14 *a participating Indian tribe, any other provision of title*
15 *I, to the extent such provision is not in conflict with this*
16 *title, shall be made a part of a funding agreement or com-*
17 *pact entered into under this title. The Secretary is obligated*
18 *to include such provision at the option of the participating*
19 *Indian tribe or tribes. If such provision is incorporated it*
20 *shall have the same force and effect as if it were set out*
21 *in full in this title. In the event an Indian tribe requests*
22 *such incorporation at the negotiation stage of a compact*
23 *or funding agreement, such incorporation shall be deemed*
24 *effective immediately and shall control the negotiation and*
25 *resulting compact and funding agreement.*

1 **“SEC. 517. REGULATIONS.**

2 “(a) *IN GENERAL.*—

3 “(1) *Not later than 90 days after the date of en-*
4 *actment of this title, the Secretary shall initiate pro-*
5 *cedures under subchapter III of chapter 5 of title 5,*
6 *United States Code, to negotiate and promulgate such*
7 *regulations as are necessary to carry out this title.*

8 “(2) *Proposed regulations to implement this title*
9 *shall be published in the Federal Register by the Sec-*
10 *retary no later than 1 year after the date of enact-*
11 *ment of this title.*

12 “(3) *The authority to promulgate regulations*
13 *under this title shall expire 21 months after the date*
14 *of enactment of this title.*

15 “(b) *COMMITTEE.*—*A negotiated rulemaking com-*
16 *mittee established pursuant to section 565 of title 5, United*
17 *States Code, to carry out this section shall have as its mem-*
18 *bers only Federal and tribal government representatives, a*
19 *majority of whom shall be nominated by and be representa-*
20 *tives of Indian tribes with funding agreements under this*
21 *Act, and the Committee shall confer with, and accommodate*
22 *participation by, representatives of Indian tribes, inter-*
23 *tribal consortia, tribal organizations, and individual tribal*
24 *members.*

25 “(c) *ADAPTATION OF PROCEDURES.*—*The Secretary*
26 *shall adapt the negotiated rulemaking procedures to the*

1 *unique context of self-governance and the government-to-*
2 *government relationship between the United States and In-*
3 *dian tribes.*

4 “(d) *EFFECT.—The lack of promulgated regulations*
5 *shall not limit the effect of this title.*

6 “(e) *EFFECT OF CIRCULARS, POLICIES, MANUALS,*
7 *GUIDANCES, AND RULES.—Unless expressly agreed to by*
8 *the participating Indian tribe in the compact or funding*
9 *agreement, the participating Indian tribe shall not be sub-*
10 *ject to any agency circular, policy, manual, guidance, or*
11 *rule adopted by the Indian Health Service, except for the*
12 *eligibility provisions of section 105(g).*

13 **“SEC. 518. APPEALS.**

14 *“In any appeal (including civil actions) involving de-*
15 *isions made by the Secretary under this title, the Secretary*
16 *shall have the burden of proof of demonstrating by clear*
17 *and convincing evidence—*

18 *“(1) the validity of the grounds for the decision*
19 *made; and*

20 *“(2) the decision is fully consistent with provi-*
21 *sions and policies of this title.*

22 **“SEC. 519. AUTHORIZATION OF APPROPRIATIONS.**

23 *“There are authorized to be appropriated such sums*
24 *as may be necessary to carry out this title.*

1 **“TITLE VI—TRIBAL SELF-GOV-**
2 **ERNANCE—DEPARTMENT OF**
3 **HEALTH AND HUMAN SERV-**
4 **ICES**

5 **“SEC. 601. DEMONSTRATION PROJECT FEASIBILITY.**

6 *“(a) STUDY.—The Secretary shall conduct a study to*
7 *determine the feasibility a Tribal Self-Governance Dem-*
8 *onstration Project for appropriate programs, services, func-*
9 *tions, and activities (or portions thereof) of the agency.*

10 *“(b) CONSIDERATIONS.—When conducting the study,*
11 *the Secretary shall consider—*

12 *“(1) the probable effects on specific programs*
13 *and program beneficiaries of such a demonstration*
14 *project;*

15 *“(2) statutory, regulatory, or other impediments*
16 *to implementation of such a demonstration project;*

17 *“(3) strategies for implementing such a dem-*
18 *onstration project;*

19 *“(4) probable costs or savings associated with*
20 *such a demonstration project;*

21 *“(5) methods to assure quality and account-*
22 *ability in such a demonstration project; and*

23 *“(6) such other issues that may be determined by*
24 *the Secretary or developed through consultation pur-*
25 *suant to section 602.*

1 “(c) *REPORT.*—Not later than 18 months after the en-
2 *actment of this title, the Secretary shall submit a report*
3 *to the Committee on Resources of the House of Representa-*
4 *tives and the Committee on Indian Affairs of the Senate.*
5 *The report shall contain—*

6 “(1) *the results of the study;*

7 “(2) *a list of programs, services, functions, and*
8 *activities (or portions thereof) within the agency*
9 *which it would be feasible to include in a Tribal Self-*
10 *Governance Demonstration Project;*

11 “(3) *a list of programs, services, functions, and*
12 *activities (or portions thereof) included in the list*
13 *provided pursuant to paragraph (2) which could be*
14 *included in a Tribal Self-Governance Demonstration*
15 *Project without amending statutes, or waiving regula-*
16 *tions that the Secretary may not waive;*

17 “(4) *a list of legislative actions required in order*
18 *to include those programs, services, functions, and ac-*
19 *tivities (or portions thereof) included in the list pro-*
20 *vided pursuant to paragraph (2) but not included in*
21 *the list provided pursuant to paragraph (3) in a*
22 *Tribal Self-Governance Demonstration Project; and*

23 “(5) *any separate views of tribes and other enti-*
24 *ties consulted pursuant to section 602 related to the*

1 *information provided pursuant to paragraph (1)*
2 *through (4).*

3 **“SEC. 602. CONSULTATION.**

4 *“(a) STUDY PROTOCOL.—*

5 *“(1) CONSULTATION WITH INDIAN TRIBES.—The*
6 *Secretary shall consult with Indian tribes to deter-*
7 *mine a protocol for consultation under subsection (b)*
8 *prior to consultation under such subsection with the*
9 *other entities described in such subsection. The pro-*
10 *tol shall require, at a minimum, that—*

11 *“(A) the government-to-government relation-*
12 *ship with Indian tribes forms the basis for the*
13 *consultation process;*

14 *“(B) the Indian tribes and the Secretary*
15 *jointly conduct the consultations required by this*
16 *section; and*

17 *“(C) the consultation process allow for sepa-*
18 *rate and direct recommendations from the In-*
19 *dian tribes and other entities described in sub-*
20 *section (b).*

21 *“(2) OPPORTUNITY FOR PUBLIC COMMENT.—In*
22 *determining the protocol described in paragraph (1),*
23 *the Secretary shall publish the proposed protocol and*
24 *allow a period of not less than 30 days for comment*
25 *by entities described in subsection (b) and other inter-*

1 *ested individuals, and shall take comments received*
2 *into account in determining the final protocol.*

3 *“(b) CONDUCTING STUDY.—In conducting the study*
4 *under this title, the Secretary shall consult with Indian*
5 *tribes, States, counties, municipalities, program bene-*
6 *ficiaries, and interested public interest groups, and may*
7 *consult with other entities as appropriate.*

8 **“SEC. 603. DEFINITIONS.**

9 *“(a) IN GENERAL.—For purposes of this title, the Sec-*
10 *retary may use definitions provided in title V.*

11 *“(b) AGENCY.—For purposes of this title, the term*
12 *‘agency’ shall mean any agency or other organizational*
13 *unit of the Department of Health and Human Services,*
14 *other than the Indian Health Service.*

15 **“SEC. 604. AUTHORIZATION OF APPROPRIATIONS.**

16 *“There are authorized to be appropriated for fiscal*
17 *years 2000 and 2001 such sums as may be necessary to*
18 *carry out this title. Such sums shall remain available until*
19 *expended.”.*

20 **SEC. 5. AMENDMENTS CLARIFYING CIVIL PROCEEDINGS.**

21 *(a) BURDEN OF PROOF IN DISTRICT COURT AC-*
22 *TIONS.—Section 102(e)(1) of the Indian Self-Determination*
23 *and Education Assistance Act (25 U.S.C. 450f(e)(1)) is*
24 *amended by inserting after “subsection (b)(3)” the fol-*

1 *lowing: “or any civil action conducted pursuant to section*
2 *110(a)”.*

3 (b) *EFFECTIVE DATE.*—*The amendment made by this*
4 *section shall apply to any proceedings commenced after Oc-*
5 *tober 25, 1994.*

6 **SEC. 6. SPEEDY ACQUISITION OF GOODS, SERVICES, OR**
7 **SUPPLIES.**

8 *Section 105(k) of the Indian Self-Determination and*
9 *Education Assistance Act (25 U.S.C. 450j(k)) is amended—*

10 (1) *by striking “carrying out a contract” and all*
11 *that follows through “shall be eligible” and inserting*
12 *the following: “or Indian tribe shall be deemed an ex-*
13 *ecutive agency and a part of the Indian Health Serv-*
14 *ice, and the employees of the tribal organization or*
15 *the Indian tribe, as the case may be, shall be eligible”;*
16 *and*

17 (2) *by adding at the end thereof the following:*
18 *“At the request of an Indian tribe, the Secretary shall*
19 *enter into an agreement for the acquisition, on behalf*
20 *of the Indian tribe, of any goods, services, or supplies*
21 *available to the Secretary from the General Services*
22 *Administration or other Federal agencies that are not*
23 *directly available to the Indian tribe under this sec-*
24 *tion or any other Federal law, including acquisitions*
25 *from prime vendors. All such acquisitions shall be un-*

1 *dertaken through the most efficient and speedy means*
2 *practicable, including electronic ordering arrange-*
3 *ments.*

4 **SEC. 7. PATIENT RECORDS.**

5 *Section 105 of the Indian Self-Determination and*
6 *Education Assistance Act (25 U.S.C. 450j) is amended by*
7 *adding at the end the following new subsection:*

8 *“(o) At the option of a tribe or tribal organization,*
9 *patient records may be deemed to be Federal records under*
10 *the Federal Records Act of 1950 for the limited purposes*
11 *of making such records eligible for storage by Federal*
12 *Records Centers to the same extent and in the same manner*
13 *as other Department of Health and Human Services pa-*
14 *tient records. Patient records that are deemed to be Federal*
15 *records under the Federal Records Act of 1950 pursuant to*
16 *this subsection shall not be considered Federal records for*
17 *the purposes of chapter 5 of title 5, United States Code.”.*

18 **SEC. 8. REPEAL.**

19 *Title III of the Indian Self-Determination and Edu-*
20 *cation Assistance Act (25 U.S.C. 450f note) is hereby re-*
21 *pealed.*

22 **SEC. 9. SAVINGS PROVISION.**

23 *Funds appropriated for title III of the Indian Self-*
24 *Determination and Education Assistance Act (25 U.S.C.*

1 450f note) shall be available for use under title V of such
2 Act.

3 **SEC. 10. EFFECTIVE DATE.**

4 *Except as otherwise provided, the provisions of this Act*
5 *shall take effect on the date of the enactment of this Act.*